

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

NATIONAL ASSOCIATION)	
OF HOME BUILDERS OF THE UNITED)	
STATES, <i>et al.</i> ,)	
)	
)	
PLAINTIFFS,)	CIV-17-009-R
)	
v.)	
)	
EDWARD C. HUGLER, ACTING)	
SECRETARY OF LABOR,)	
in his official capacity, <i>et al.</i> ,)	
)	
DEFENDANTS.)	

DEFENDANTS' MOTION TO STAY PROCEEDINGS FOR 60 DAYS AND
BRIEF IN SUPPORT THEREOF

Defendants ("the Government") respectfully move this Court to stay proceedings in the above-captioned matter for 60 days. Plaintiffs have indicated that they need additional time to take a position on the motion.¹ In support of this motion, the Government states as follows:

1. On January 4, 2017, Plaintiffs filed this challenge to a 2016 Occupational Safety and Health Administration ("OSHA") rule that, among other things, requires certain employers to submit injury and illness data electronically and prohibits employers from

¹ Two sets of prospective intervenors have filed motions to intervene. *See* ECF Nos. 35 (motion of the "Union Intervenors"), 47 (motion of the "Public Health Intervenors"). Although no prospective intervenor is currently a party in this case, counsel for the Government has conferred with counsel for both sets of prospective intervenors and has confirmed that the Public Health Intervenors do not oppose this stay request and that the Union Intervenors take no position on the request.

retaliating against employees for reporting an injury or illness. *See* ECF No. 1; *see generally* Improve Tracking of Workplace Injuries and Illnesses, 81 Fed. Reg. 29,624 (May 12, 2016), as revised at 81 Fed. Reg. 31,854 (May 20, 2016) (the “New Rule”).

2. This Court, like any district court presiding over a civil action, “has the power to stay proceedings pending before it and to control its docket for the purpose of economy of time and effort for itself, for counsel, and for litigants.” *Baca v. Berry*, 806 F.3d 1262, 1269–70 (10th Cir. 2015) (quoting *Pet Milk Co. v. Ritter*, 323 F.2d 586, 588 (10th Cir. 1963)).

3. The Government requests that the Court exercise its discretion to stay this case for 60 days because doing so would allow incoming leadership personnel at the United States Department of Labor adequate time to consider the issues raised in this case.

4. Granting the requested stay would result in the following revised deadlines:

- a. Responses to the Union Intervenors’ motion to intervene would be due **May 28, 2017** (instead of the current deadline of March 29, 2017).
- b. The Plaintiffs’ and Government’s joint proposed summary judgment briefing schedule would be due **June 9, 2017** (instead of the current deadline of April 10, 2017).
- c. Responses to the Public Health Intervenors’ motion to intervene would be due **June 12, 2017** (instead of the current deadline of April 11, 2017).

5. Undersigned counsel first conferred with counsel for Plaintiffs regarding this request on March 14, 2017. On March 22, 2017, Plaintiffs’ counsel advised that Plaintiffs need additional time to take a position on the motion.

WHEREFORE, the Government respectfully requests that the Court grant its motion for a 60-day stay in this case. A proposed order is being emailed to chambers concurrent with the filing of this motion.

Dated: March 22, 2017

Respectfully submitted,

JOYCE R. BRANDA
Deputy Assistant Attorney General

JUDRY L. SUBAR
Assistant Director, Federal Programs
Branch

/s/ Michael H. Baer
MICHAEL H. BAER
Trial Attorney (NY Bar No. 5384300)
U.S. Department of Justice,
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, D.C. 20530
Telephone: (202) 305-8573
Facsimile: (202) 616-8460
E-mail: Michael.H.Baer@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 22, 2017, a true, correct, and exact copy of the foregoing document was served via electronic notice by the CM/ECF filing system to all parties on their list of parties to be served in effect this date.

/s/ Michael H. Baer
MICHAEL H. BAER